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Before the
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

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)
Application by Verizon New England, Inc.,
Bell Atlantic Communications, Inc. (d/b/a
Verizon Long Distance), NYNEX Long
Distance Company (d/b/a Verizon
Enterprise Solutions), and Verizon
Global Networks, Inc., for Authorization
to Provide In-Region, InterLATA Services
in Massachusetts)

CC Docket No. 00-176

REPLY COMMENTS OF
DIGITAL BROADBAND COMMUNICATIONS, INC.

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November 3, 2000

No. of Copies rec'd 041
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**REPLY COMMENTS OF
DIGITAL BROADBAND COMMUNICATIONS, INC.**

Digital Broadband Communications, Inc. (“Digital Broadband”), by its attorneys, hereby replies to the Comments filed October 16, 2000 in the above-captioned proceeding to evaluate Verizon’s application pursuant to Section 271 of the Communications Act of 1934, as amended (the “Act”) for authorization to provide in-region, interLATA service in the state of Massachusetts (the “Application”). As is abundantly clear from the record in this proceeding, Verizon has failed to satisfy its burden of proving that the markets in which Verizon has long enjoyed monopoly power in Massachusetts are irreversibly open to competition and that it is treating competitors on a non-discriminatory basis. Consequently, a grant of Verizon’s Application would be premature and contrary to the public interest.

I. Summary and Preliminary Statement

Digital Broadband is a Broadband Communications Provider of retail high-speed, broadband access, including Digital Subscriber Line (“DSL”) service, to small-to-medium size businesses and to enterprise corporations seeking a broadband solution for their employee

teleworkers. Unlike many other CLECs that offer DSL, Digital Broadband does not provide wholesale services.

Digital Broadband is a Massachusetts-based company, with an extensive footprint throughout the state. The company was formed in early 1999, and has aggressively sought to enter and compete in the advanced services marketplace that was envisioned by Congress when it passed the Telecommunications Act of 1996. Digital Broadband expects to be collocated in more than 200 central offices in Massachusetts – over 90% of Verizon’s COs in the state – by the end of the first quarter 2001. In addition, by the end of this year, approximately 80% of Digital Broadband’s installed broadband lines will be located in Massachusetts. Verizon is Digital Broadband’s sole vendor for those lines. Consequently, Digital Broadband has substantial experience with Verizon in Massachusetts and can state unequivocally that Verizon’s actual performance shows that Verizon’s markets in the state are not open to competition. Based upon Digital Broadband’s experience in Massachusetts and the record of this proceeding, the Commission should deny the Application.

In Declarations submitted on October 16, Digital Broadband explained in detail how Verizon’s performance in provisioning Operations Support Systems (“OSS”), unbundled loops (in particular, loops capable of providing DSL and other advanced services), and interoffice facilities (“IOF”) – contrasts starkly with Verizon’s claims that its performance justifies a grant of the Application.¹ Digital Broadband’s data shows that for the periods it studied, Verizon’s

¹ See Comments of the Association for Local Telecommunications Services Coalition (“ALTS Comments”), Exhibit A, Declaration of B. Kelly Kiser, Vice President – Regulatory and Legal Affairs (“Kiser Declaration”), Declaration of Theresa M. Landers, Vice President – Network Services (“Landers Declaration”), Declaration of Steve Melanson, Vice President – Customer Operations (“Melanson Declaration”), and Declaration of John McMillan, Vice President – Field Operations (“McMillan Declaration”), filed October 16, 2000 in CC Docket No. 00-176.

performance at every step of the provisioning process – from allowing access to information needed to determine whether a loop can support a desired technology, through the completion of loop and IOF orders, to the quality of the loops and IOF that it has provided – is grossly inadequate. Digital Broadband’s evidence is directly relevant to the question of whether Verizon has satisfied critical Checklist items. This and other evidence presented to the Commission in this proceeding provides substantial support for denying Section 271 authority to Verizon in Massachusetts at this time.

II. xDSL and Line Sharing Issues Are Integral to Findings of Checklist Compliance

This Commission understands “the critical importance of the provisioning of DSL loops to the development of the advanced service marketplace.”² Indeed, the Commission provided explicit notice to future Section 271 applicants that it fully expected them to “make *a separate and comprehensive evidentiary showing* with respect to the provision of xDSL-capable loops.”³ The Court of Appeals has echoed the Commission’s words.⁴ Similarly, the Commission has given notice that Section 271 applicants must demonstrate compliance with line sharing obligations.⁵

² *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Services in the State of New York, Memorandum Opinion and Order*, 15 FCC Rcd 75 (1999), ¶ 330, *aff’d AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000).

³ *Id.* (emphasis added).

⁴ *AT&T Corp. v. FCC*, 220 F.3d 607, 624 (D.C. Cir. 2000) (“We ... expect, as did the FCC, that as DSL-capable loops become a larger proportion of unbundled loops, and as performance standards are developed, checklist compliance will require a separate and comprehensive evidentiary showing with respect to the provision of DSL-capable loops.”).

⁵ *Application of SBC Communications, Inc., Southwestern Bell Telephone company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of*

(footnote continued to next page)

Verizon chose to ignore these admonitions and has made scant effort to demonstrate that it is provisioning xDSL-capable loops in Massachusetts in a manner consistent with its obligations under the Act. As the United States Department of Justice (“DOJ”) concluded in its Evaluation of Verizon’s Application, “the principal issue on which Verizon has failed to develop an adequate record is its provision of unbundled loops for [DSL] services.”⁶ The DOJ concluded that the Application should not be approved until Verizon demonstrates that it provides non-discriminatory access to DSL loops and that appropriate performance measures are in place to deter backsliding.⁷ Digital Broadband agrees. The importance of DSL in the deployment of advanced services and the establishment of a competitive marketplace cannot be questioned. Accordingly, Verizon must be held to the same burden of proving compliance with these obligations as it is to more traditional Checklist obligations.

III. There Is Substantial Evidence of Verizon’s Poor Advanced Services Loop Performance

Digital Broadband has submitted extensive data regarding Verizon’s provisioning of xDSL and other loops capable of providing advanced services. In particular:

- **Verizon’s provision of OSS is discriminatory and OSS quality is poor.** A substantial number of loops cannot be qualified for DSL service because the databases Verizon makes available to its competitors provide demonstrably inferior access to data in Verizon’s possession.⁸ In addition, Verizon flatly refuses to make available OSS – including its Loop Facilities Automated Control System (“LFACS”)

(footnote continued from previous page)

the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, FCC No. 00-238, rel. June 30, 2000, at ¶ 321.

⁶ Evaluation of the U.S. Department of Justice, October 27, 2000 (“DOJ Evaluation”), at 2.

⁷ *Id.* at 3, 8-17.

⁸ ALTS Comments, Exhibit A, Melanson Declaration at ¶¶ 9-10; Landers Declaration at ¶ 18.

– in the same time and manner as it available to Verizon, ignoring its obligation under federal law to do so.”⁹

- **Verizon routinely misses its committed dates for provisioning loops.** Only 33% of DSL loop orders receive Firm Order Commitment (“FOC”) responses from Verizon within the standard interval. Moreover, nearly 25% of orders received FOC responses three or more weeks beyond the standard interval, and Verizon delivered only about 65% of DSL orders on its committed date.¹⁰ Stated another way, Verizon first gives FOC responses outside the normal interval for two-thirds of DSL loop orders, and then fails to deliver on time on one-third of the orders.
- **Verizon’s provisioning of DS1 orders is even worse than its provisioning of DSL orders.** Less than 10% of DS1 orders received FOC responses within the standard interval and less than 50% of orders were delivered on the committed date.¹¹
- **Verizon provisions loops that are of poor quality.** Nearly 20% of DSL loop orders pass initial testing but fail subsequent testing, and more than 50% of those failures are due to Verizon.¹² The failure rate for DS1s has been even higher, with more than 50% not passing initial testing.¹³ Moreover, a large number of loop orders fail at the time Digital Broadband installs equipment at the customer premises, and in more than 50% of these instances the failures are due to Verizon. This often happens because the loop as initially tested is altered by Verizon in such a manner that the loop as initially tested no longer is available.¹⁴

Significantly, this evidence is consistent with Verizon’s own data, which, as the DOJ notes, “indicate discriminatory performance.”¹⁵ The results of Digital Broadband’s study of its

⁹ ALTS Comments, Exhibit A, Kiser Declaration at ¶¶ 7-14.

¹⁰ ALTS Comments, Exhibit A, Melanson Declaration at Attachment 1.

¹¹ *Id.* at Attachment 2.

¹² ALTS Comments, Exhibit A, McMillan Declaration at Attachment 1.

¹³ *Id.*

¹⁴ ALTS Comments, Exhibit A, McMillan Declaration at ¶¶ 9-10.

¹⁵ DOJ Evaluation at 10.

DSL loop orders plainly contradict Verizon's assertion that its "performance for DSL loops is excellent."¹⁶

In its Evaluation, DOJ notes that Verizon's own performance reports reflect "significant discrimination" by Verizon throughout the provisioning process.¹⁷ Digital Broadband has supplied evidence that supports the DOJ's analysis. Digital Broadband urges the Commission not to credit vague, non-specific statements by Verizon intended to discredit the performance data by blaming CLECs. For example, Verizon claims, without citing specific supporting data, that unnamed CLECs accept DSL loops that they know do not work, and then submit trouble tickets to have Verizon perform repairs.¹⁸ The D.T.E. credits Verizon's position without citing any specific instances.¹⁹ Insofar as Digital Broadband is concerned, it flatly rejects any assertion that it engages in this practice in connection with DSL loop orders. Verizon is simply making broad-brush assertions against all CLECs in order to avoid addressing relevant data in any specific manner. As DOJ recognizes, Verizon's ability to take this approach is helped by the fact that it has not given CLECs individual performance reports.²⁰

The D.T.E. concedes that Verizon "has not yet reached formal parity,"²¹ but nonetheless concludes that based upon the data it has reviewed (some of it dating from 1999), that "[t]he

¹⁶ Application at 23.

¹⁷ *Id.*

¹⁸ Verizon Brief at 25-26.

¹⁹ D.T.E. Evaluation at 324.

²⁰ See DOJ Evaluation at 11.

²¹ *Id.* at 315.

more experience [Verizon] gains, the better its performance [in provisioning DSL loops] becomes.”²² Digital Broadband’s experience, as documented in its Declarations, leads it to reach a different conclusion.²³ The D.T.E.’s findings with respect to provisioning intervals and loop quality, moreover, reinforce DOJ’s belief that the lack of DSL performance metrics undermines Verizon’s claims of non-discriminatory access.

Finally, it is significant that although the Commission established rules for DSL and line sharing long before Verizon filed its Application,²⁴ no state-approved rates, terms and conditions for DSL and line sharing conforming to the Commission’s rules were in place until after Verizon filed its Application. In the interim, Verizon refused to negotiate with Digital Broadband any provisions that differed significantly from Verizon’s proposed tariff. As a result, Verizon and CLECs have not competed on an equal footing in Massachusetts in the advanced services marketplace.

Verizon did not submit its proposed rates, terms and conditions for DSL and line sharing in Massachusetts until May 2000, even though its obligations were to take effect shortly thereafter. Subsequently, numerous provisions of the tariff were expressly rejected, and approval of the remainder did not occur until after Verizon filed its Application. Despite ample notice that it would be required to justify its performance on DSL and line sharing provisioning, Verizon

²² *Id.*

²³ See, e.g., ALTS Comments, Exhibit A, Melanson Declaration at ¶¶ 5-27; McMillan Declaration at ¶¶ 5-11.

²⁴ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, *Third Report and Order*, and *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Fourth Report and Order*, 14 FCC Rcd 20912 (1999) (“*Line Sharing Order*”).

ignored the Commission's rules. For example, in its proposed tariff (D.T.E. 98-57 Phase III), Verizon attempted to be the sole arbiter of whether a CLEC's advanced service causes "significant degradation" to Verizon's voice service – a clear violation of the Commission's rules. The D.T.E. properly rejected Verizon's proposed provisions and ordered Verizon to conform its tariff to the Commission's rules.²⁵ The D.T.E. also found that numerous rates proposed by Verizon were excessive or not justified, and ordered a substantially shorter provisioning interval than Verizon had proposed.

In sum, despite ample notice that it would be expected to demonstrate in a Section 271 application that it had complied with its DSL and line sharing obligations, Verizon made little effort to do so.

IV. Verizon's Provisioning of Inter-Office Facilities

Digital Broadband has supplied evidence that Verizon's performance on IOF provisioning also is extremely poor. Verizon routinely misses its committed dates for provisioning IOF, manipulates its performance reports, and provisions IOF of poor quality – factors that demonstrate that Verizon has not satisfied Checklist Item 5.²⁶

For Digital Broadband's DS3 orders that it has studied, Verizon completed less than 25% of the orders by the date it committed to.²⁷ Verizon also frequently gives FOC dates far beyond

²⁵ See D.T.E. 98-57 Phase III Order, September 29, 2000, at Section III.A.2.c.

²⁶ See ALTS Comments, Exhibit A, Landers Declaration at ¶¶ 11-15 and Attachment 1

²⁷ See ALTS Comments, Exhibit A, Landers Declaration, Attachment 1.

the standard provisioning interval – up to 15 months after the order date in some cases – and just as frequently changes FOC dates.²⁸

Most troubling is Verizon’s practice of refusing to dispatch to correct a non-functioning DS3 circuit unless Digital Broadband agrees to move the due date out at least five days, which allows Verizon to manipulate reports it files for IOF performance measurements.²⁹ The alternative to agreeing with Verizon’s request is to accept the circuit and then place trouble requests.³⁰

Digital Broadband’s evidence is substantially at odds with Verizon’s reported performance on UNE IOF provisioning.³¹ Of course, as with other performance measures that reflect a lack of parity, Verizon has a ready excuse – here, that a low order volume can skew its performance.³² In the normal course it should be expected that low order volumes would have the opposite affect on performance. Although the D.T.E. concluded that the lack of parity on IOF provisioning “is not competitively significant,” in fact the differences are significant. Because Verizon often claims a lack of IOF facilities, carriers may be forced to request special access IOF, which are not considered for purposes of Checklist compliance.³³ As is clear from

²⁸ *Id.* at ¶¶ 12-13.

²⁹ *Id.* at ¶ 15.

³⁰ *See id.*

³¹ *See, e.g.,* D.T.E. Evaluation at 341-344.

³² *See id.* at 344.

³³ As Digital Broadband has stated, Verizon’s lack of facilities can lead to Digital Broadband being forced to pay space and power charges for central office collocation arrangements that are useless until inter-office facilities are provisioned. *See* ALTS Comments, Exhibit A, Landers Declaration at ¶ 6.

the D.T.E.'s Evaluation, however, Verizon's provisioning of special access orders also is extremely poor.³⁴ Thus, Verizon is able to avoid accurate measurement of its IOF provisioning.

**V. Evidence of the Inaccuracy of Verizon's
Loop Qualification Database Was Timely Presented to the D.T.E.**

In its Comments, the D.T.E. states that Verizon supplies CLECs with "the amount of information most CLECs require to qualify a loop."³⁵ In making this finding, however, the D.T.E. ignored evidence that Verizon routinely provides inaccurate information and does not make available loop qualification information in substantially the same time and manner as that information is available to Verizon. In any event, the standard is parity – information that is available to Verizon must be made available to CLECs in the same time and manner, even if "most" CLECs do not require identical information.

As an initial matter, the D.T.E. has stated that Digital Broadband "unaccountably first raised th[e] issue [of the inaccuracy of Verizon's database] at the oral argument; thus there was no opportunity for VZ-MA to respond."³⁶ In fact, the issue already had been presented in D.T.E. 98-57 Phase III, a proceeding which is part of the record before this Commission.³⁷ The fact that Verizon has chosen not to address the issue is not because the issue was not raised in Massachusetts. It was.

³⁴ See D.T.E. Evaluation at 350.

³⁵ See D.T.E. Evaluation at 305.

³⁶ *Id.* at 306.

³⁷ The D.T.E. acknowledges, however, that in D.T.E. 98-57 Phase III Digital Broadband "provided documentation in support of its database inaccuracy claim." D.T.E. Evaluation at n. 939.

When the D.T.E. denied motions to incorporate the record of the Phase III proceeding into D.T.E. 99-271 (including a motion filed by Digital Broadband), the D.T.E. stated unequivocally that “[p]articipants can be confident that the [D.T.E.] will not argue, nor would it support any carrier that makes the argument, that because a document was not filed in D.T.E. 99-271 or incorporated by reference into D.T.E. 99-271, it is not relevant to the FCC’s review Verizon’s § 271 application.”³⁸ The D.T.E. added that this Commission “is quite aware of documents filed in other [D.T.E.] proceedings, including Phase III, and will afford all due consideration to those submissions during the analysis it will undertake in its evaluation of whether Verizon complies with the § 271 checklist.”³⁹ The D.T.E. concluded that it had “been informed by FCC staff that the FCC does not view this decision by the [D.T.E.] ... as a hindrance to a carrier’s ability to argue fully about whether Verizon complies with the § 271 requirements.”⁴⁰ Without question, Verizon has been on notice that it may not ignore relevant evidence presented in D.T.E. 98-57 Phase III, including evidence that its loop qualification database is not accurate.⁴¹

³⁸ D.T.E. 99-271, Hearing Officer’s Rulings on the Request to Incorporate by Reference Certain Material Into D.T.E. 99-271, and the Scheduled Oral Argument, August 29, 2000.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Compare D.T.E. Evaluation at 302, citing Verizon’s statement that “Digital Broadband should have made the claim earlier”. Of course, Digital Broadband did so.

The DOJ is correct that, in the final analysis, Verizon's xDSL performance has not been sufficiently measured.⁴² This is particularly true with respect to the accuracy of the loop qualification database. As Digital Broadband has pointed out, KPMG's testing of GUI availability and performance was extremely limited,⁴³ notwithstanding the fact that the vast majority of carriers in Massachusetts use the GUI to access the loop qualification database.⁴⁴ In fact, KPMG reviewed only 155 pre-order transactions using the GUI – just 4% of the total pre-order transactions it tested. Nor did KPMG break these down by transaction types, such as number of DSL loop orders.⁴⁵ Nonetheless, KPMG concluded that it was “satisfied” with both the availability and performance of the GUI.⁴⁶ However, KPMG performed little or no testing on the accuracy of the loop qualification data supplied by Verizon.⁴⁷

⁴² DOJ Evaluation at 15 (noting that KPMG did not test DSL metrics and that Verizon has not provided individual CLEC performance reporting for DSL orders).

⁴³ See ALTS Comments, Exhibit A, Kiser Declaration at ¶¶ 15-18.

⁴⁴ See Verizon Brief, Joint Declaration of K. McLean and R. Wierzbicki.

⁴⁵ See ALTS Comments, Exhibit A, Kiser Declaration at ¶ 15.

⁴⁶ See ALTS Comments, Exhibit A, Kiser Declaration at ¶ 15. KPMG's conclusion appears to be flawed with respect to pre-ordering OSS access, because KPMG tested for *responses*, not for *accuracy of the responses*. In particular, KPMG deemed *any* response – including all “error” responses – sufficient as a measure of whether the GUI was functioning. See *id.* at ¶ 16. Therefore, the GUI, when used for pre-ordering, received a 100% rating for “Presence of Functionality,” simply because it gave either an “error message” or a “valid response.” *Id.* Without knowing whether these responses were accurate, however, that rating cannot be relied upon as a validation of Verizon's OSS performance.

⁴⁷ KPMG also did no follow up testing to determine whether an error message should have been received – that is, whether the LQD in fact contained wrong information, or was simply incomplete. It has been Digital Broadband's experience that error messages often are the result of failures by Verizon either to include information in the database, or to enter information in the database correctly. See ALTS Comments, Exhibit A, Kiser Declaration at ¶ 17. KPMG simply did not test these “false negatives.”

The D.T.E. has acknowledged that “an inaccurate database could unnecessarily slow deployment of” broadband services in the state.⁴⁸ Digital Broadband has experienced firsthand how inaccuracies in data returned by the GUI and the loop qualification database delay deployment. Each inaccurate response requires Digital Broadband to expend scarce resources to determine whether the response received was accurate.⁴⁹

VI. Verizon’s OSS Offerings Are Discriminatory

Inaccurate databases create provisioning delays. For this reason, Digital Broadband has sought to gain access to Verizon records that are necessary to determine whether a loop is capable of supporting advanced services, consistent with the Commission’s rules. Nonetheless, Verizon has refused to make available its OSS – specifically, loop qualification information contained in the Loop Facilities Automated Control System (“LFACS”) and other databases – in the same time and manner as that information is available to Verizon.⁵⁰

Verizon is required to “provide ... access to the same detailed information about the loop that is available to [it], so that [a CLEC] can make an independent judgment about whether the loop is capable of supporting the advanced services equipment the [CLEC] intends to install.... [A]t a minimum, [Verizon] must provide [CLECs] the same underlying information that [Verizon] has in any of its own databases or other internal records,” including the information

⁴⁸ D.T.E. Evaluation at 306.

⁴⁹ See ALTS Comments, Exhibit A, Melanson Declaration at ¶¶ 27-28.

⁵⁰ Digital Broadband testified in DTE No. 98-57 Phase III regarding Verizon’s discriminatory treatment, and that evidence also is properly before the Commission for consideration in this proceeding. See Verizon Application, Appendix E, Record of Massachusetts DTE Docket No. 98-57 (Interconnection Tariff Proceeding), Vol. 212, Tab 1 (Direct Testimony of Digital Broadband Communications, Inc.; see also generally id. at Vol. 24, Tab 1 (Transcript of Hearing Aug. 1 and Aug. 2, 2000; Transcript of Oral

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listed in the definition of “pre-ordering and ordering.”⁵¹ Verizon may not “filter or digest” its loop qualification information.⁵² Nonetheless, although Verizon has admitted that LFACS contains substantial information CLECs need to determine whether an individual loop is qualified,⁵³ it has refused to give CLECs direct access to LFACS. Instead, Verizon has erected barriers to the information, forcing carriers to first access the mechanized qualification database (which, as has been shown, frequently is inaccurate).

The Commission has found that “the provision of access to OSS functions and the information they contain is integral to the ability of competing carriers to enter the local exchange market,” and that a CLEC that lacks access to an ILEC’s OSS “will be severely disadvantaged ... from fairly competing.”⁵⁴ Because Verizon requires CLECs to pre-qualify a loop before placing an order, timely access to accurate information is critically important. Verizon’s loop qualification access performance and its denial of LFACS therefore are directly

(footnote continued from previous page)

Argument Held Sept. 8, 2000 (omitted from Verizon’s Appendix B, Record of DTE Docket No. 99-271).

⁵¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Third Report and Order*, 15 FCC Rcd 3885 (1999), ¶ 427 (“UNE Remand Order”).

⁵² *Id.* at ¶¶ 427-28.

⁵³ See Verizon Application, Appendix E, *Record of Massachusetts DTE Docket No. 98-57 (Interconnection Tariff Proceeding)*, Vol. 24, Tab 1, Transcript of Hearing Held August 2, 2000 (Mr. White), p. 493; see also *id.* at Vol. 19, Tab 1, BA-MA’s Responses to Rhythms/Covad Information Requests (submitted 6/22/00); see also Ex. 29, BA-MA Reply to RL/CVD 1-33 (listing information contained in LFACS, including location and type of electronics, location of bridged taps, spare pair availability, cable and pair identification, and other information).

⁵⁴ *UNE Remand Order*, 15 FCC Rcd 3923-24 ¶¶ 516-518.

relevant to the Commission's consideration of Verizon's Application, and warrant a conclusion that Verizon has not satisfied Checklist Item 2.⁵⁵

VII. Conclusion

DOJ's Evaluation notes that "[a]fter a slow start, Verizon is the largest provider of DSL service in Massachusetts, adding four times as many DSL lines per month as all other CLECs combined."⁵⁶ Based upon Digital Broadband's experience, Verizon should not be entitled to any presumption that it has achieved this market share because it is an efficient competitor on a level playing field. The record shows that Verizon is not providing non-discriminatory access to advanced services loops, related OSS, and IOF,

⁵⁵

A separate basis for finding that Verizon's OSS is not in compliance with Checklist Item 2 is the fact that Verizon has failed to modify its OSS in Massachusetts to accommodate line sharing. In the *Line Sharing Order*, the Commission explicitly found that an ILEC's failure to modify its OSS to accommodate line sharing may support a finding that the ILEC is failing to provide nondiscriminatory access to UNEs, and that such evidence is relevant in the context of a Section 271 proceeding. *Line Sharing Order* at 20986, ¶ 173. The Commission clearly stated that "incumbent LECs can implement suitable OSS modifications within the time frame we establish for implementation of this obligation." *Id.* at 20970, ¶ 126 and n.300. Furthermore, the Commission found that ILECs "have already modified their OSS systems to accommodate their own xDSL products, and ... those modifications and those required for line sharing are substantially similar." *Id.* at 20971, ¶ 127. The anti-competitive effects of Verizon's denial of access to LFACS thus are obvious.

⁵⁶

DOJ Evaluation at 7.

and that appropriate performance measures are not in place. Unless and until Verizon has carried its burden of proof on these matters, its Application should be denied.

Respectfully submitted,

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November 3, 2000

CERTIFICATE OF SERVICE

I, Jennifer A. Short, hereby certify that on this 3rd day of November, 2000, I caused a copy of the foregoing Reply Comments of Digital Broadband Communications, Inc. to be served by U.S. first-class mail, or by hand delivery as indicated with an *, to the following persons:

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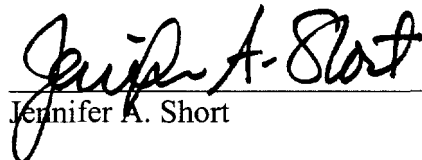
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